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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1991

Addendum

GUATEMALA*

[31 July 1995]

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* This document supplements the initial report submitted by the Government of Guatemala on 24 November 1994 and reproduced in document CAT/C/12/Add.5.

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Introduction

1. In the report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which the State of Guatemala transmitted to the Committee against Torture in November 1994, it was stated that the torture of persons in Guatemalan territory is not permitted. There is extensive national legislation on the subject, although it is recognized that some human rights violations do continue to take place - albeit to a lesser extent than before - because of the persistent low-intensity war that has been afflicting the people of Guatemala for more than 30 years. We also acknowledge the "ineffectiveness of the police, judges, prosecutors and other personnel of the justice system in carrying out duties essential to order and security", as stated in the 1994 annual report of the Inter-American Commission on Human Rights. We do, however, declare that the State of Guatemala does not practise impunity or human rights violations, either government-backed or encouraged by governmental sectors.

2. This document was prepared by a committee made up of representatives of the Ministries of the Interior, Foreign Affairs and Defence and representatives of the Office of the Attorney-General of the Nation and Public Prosecutor's Office, together with advisers from the Office of the President of the Republic. The members of the committee listed the following aspects as important: the political and social situation in Guatemala; the legal framework surrounding the offence of torture and other cruel, inhuman or degrading treatment or punishment; the situation regarding torture in Guatemala, as seen by the independent experts of the United Nations; legal and administrative measures for the prevention of torture; measures under the responsibility of the Ministry of the Interior; and cases within the competence of the judiciary.

3. This submission is an attempt to demonstrate to the international community the efforts being made by Guatemala to improve the situation with regard to respect for human rights.

I. THE POLITICAL AND SOCIAL SITUATION 1985-1995

4. The latter half of the 1980s was a period that raised hopes for democratic co-existence, and respect for and realization of human rights. This period, known as the "democratic transition", was reflected in the assumption of office by two civilian Governments, the first from 1986 to 1991 and the second from 1991 to 1996.

5. However, halfway through the term of the second civilian Government, there was a crisis when the then President attempted to dissolve the Congress of the Republic and introduce de facto changes in the membership of the Supreme Court of Justice. The crisis was overcome through the workings of the legal mechanisms, which enabled the constitutional order to prevail.

6. This political and social crisis led to an intensification of the peace negotiations, and also of the State's concern to ensure respect for human rights, so much so that the Government of Guatemala considers it of the utmost importance to fulfil its commitments to the international community regarding the Covenants and Conventions of which Guatemala is a signatory.

7. Guatemala's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as an international legal instrument, which focuses its attention on the elimination of this violation of human rights, took place as part of a process of change aiming at the permanent abolition of practices that violate human rights. These practices were without doubt a feature of political and social developments in preceding years.

8. Of significance during the period under review has been the work of the Procurator for Human Rights, which has been instrumental in strengthening the rule of law.

9. The Civil Society Assembly has been strengthened during this period, and its recommendations have been taken into consideration in the peace negotiation process. Grass-roots organizations enjoy freedom to express themselves in all the media available to them on matters considered to be in their interest.

10. This period saw the beginning of the process of return of Guatemalan families who had taken refuge in Mexico. This process is supervised by the Ad Hoc Committee for Aid to Returnees (CEAR), with the support of international agencies.

11. Our legislation has been modernized with the entry into force of the new Code of Penal Procedure.

12. Amendments are being made to the Constitution to bring it into line with current political and social conditions,

13. Since 1987, the Commission on Human Rights has provided three expert advisers to assist the Government in the field of human rights.

14. The reports of the advisory services in the field of human rights have highlighted the fact that the Government of the Republic as such does not advocate a governmental policy of violation of human rights. However, it must be acknowledged that acts involving impunity and human rights violations do occur in spite of the Government's desire to end this de facto situation.

15. The cases of impunity are a matter of concern in Guatemala. Impunity is a result of the low-intensity war that has been waged on national territory for more than 30 years. Efforts are being made to eliminate this practice, and to this end the Government enjoys the assistance and cooperation of the United Nations Human Rights Verification Mission in Guatemala (MINUGUA).

II. THE LEGAL FRAMEWORK SURROUNDING THE OFFENCE OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN GUATEMALA

A. Constitutional law

16. The Constitution of the Republic of Guatemala, promulgated on 31 May 1985, is eminently humanistic, as is apparent from both its preamble and its operative part. The preamble is considered by the Constitutional

Court of Guatemala to be the source of interpretation of the Constitution since it contains "a declaration of principles expressing the values which the drafters of the Constitution set out in the text" 1/ (of the Constitution), affirming the primacy of the human person as the subject and object of the social order, recognizing the family to be the primary and fundamental source of the spiritual and moral values of society, and the responsibility of the State for promoting the common good and strengthening the rule of law, security, justice, equality, freedom and peace.

17. This declaration of principles was strengthened throughout the Constitution, principally in Title I "The human person; the aims and duties of the State" and Title II "Human rights", which contain an extensive list of the rights of the human person.

18. Another specific feature of the Guatemalan Constitution is its ius naturalista approach, establishing in article 44 that the rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are laid down in the international covenants and conventions of which Guatemala is a signatory.

19. In addition to this extensive legislation, there has been significant progress with respect to constitutional guarantees, such as the establishment of a permanent court with exclusive jurisdiction over matters of amparo (enforcement of constitutional rights) and constitutionality of the laws in general and in specific cases, whose basic function is to safeguard the constitutional order; the establishment, at the constitutional level, of the Human Rights Commission and the office of Procurator for Human Rights, with the stipulation that the Procurator has been mandated by Congress and that his primary function is to defend the human rights guaranteed by the Constitution; and at the legislative level, a law with constitutional rank, the Amparo, Habeas Corpus and Constitutionality Act, passed by the same constituent body of 1985, which establishes regulations governing all matters relating to the exercise of amparo, unconstitutionality and the remedy of habeas corpus.

20. A corollary of the foregoing is the constitutional provision to the effect that action brought against violators of human rights is public and may be brought simply by lodging a complaint, without bond or formality of any kind. 2/

21. Similarly, the provision establishing the general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law 3/ makes it possible for those international instruments to be incorporated into the Guatemalan legal system and gives them a higher rank than ordinary or derivative legislation. As a result, under Guatemalan legislation an ordinary law may be contested on the grounds that it is at variance with a human rights treaty or convention through one of the constitutional guarantees, i.e. through an action for unconstitutionality regarding laws, regulations and provisions of a general nature, which can be brought by anyone with the help of three qualified and practising lawyers.

22. The constitutional legal framework for the protection of the individual against torture and cruel, inhuman or degrading treatment or punishment is thus made up of the preamble of the Constitution, which is the source for interpretation of the constitutional provisions, and articles 1 and 2, which stipulate that the State of Guatemala is established to protect the individual and the family, that its supreme aim is the achievement of the common good, and that it is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual, and article 4, which states that no one may be subjected to servitude or any other condition which impairs his dignity.

23. In this connection, and in accordance with the Guatemalan constitutional approach, constitutional regulations concerning the legal detention of individuals have been laid down from the outset and have since undergone extensive development. The Constitution has thus established an entire procedure that must be observed when individuals are detained or arrested, for the purpose of protecting them against possible abuses by the authorities. Thus it is stipulated that: "no one may be arrested or imprisoned except for a crime or misdemeanour and by virtue of an order issued pursuant to the law by a competent judicial authority"; "no one shall be obliged to carry out orders which are not based on, and issued in accordance with, the law"; "Persons arrested shall be placed at the disposal of the competent judicial authority within a period of not more than six hours and may not be subordinated to any other authority. Any official or employee of the public authorities who infringes the provisions of this article shall be punished in accordance with the law, and the courts shall automatically institute appropriate proceedings". 4/

24. In the case of misdemeanours or breaches of regulations, if the person detained cannot be identified, the time-limit set by the Constitution for the representatives of the authorities to bring the detainee before the competent judicial authority is even shorter: one hour. "Every person arrested shall be immediately informed of his rights in a manner understandable to him, and particularly of the fact that he may avail himself of a legal counsel, who shall be present at all police and judicial proceedings. An arrested person shall not be obliged to make a statement, except before a competent judicial authority ... the judicial authorities alone are competent to interrogate arrested persons and prisoners. Their interrogation shall take place within a period not exceeding 24 hours. Extrajudicial interrogation shall not have probative value."

25. As to the prison system, the Constitution stipulates that its goal shall be the social rehabilitation and re-education of prisoners, and certain compulsory minimum standards of treatment are established. Thus, prisoners must be treated as human beings and may not be subjected to cruel treatment, physical, emotional or psychological torture, coercion or harassment, work that is not compatible with their physical condition, degrading acts, extortion or scientific experiments. Violation of any of the established rules gives a detainee the right to claim compensation from the State for the injury suffered and the Supreme Court of Justice will order immediate protection for him. Similarly, the Constitution lays down penalties for public officials or employees who issue or carry out orders in violation of the provisions of the Constitution. These consist of the penalties laid down

by ordinary legislation, in addition to immediate dismissal and permanent debarment from public office or employment. Offences committed in such circumstances are imprescriptible.

26. Again in accordance with article 46 of the Constitution, Guatemalan constitutional and ordinary legislation concerning torture and cruel, inhuman or degrading treatment or punishment has gradually been expanded as Guatemala has acceded to several international legal instruments such as: the Universal Declaration of Human Rights, article 5 of which prohibits such acts; the American Declaration of the Rights and Duties of Man; the Inter-American Convention to Prevent and Punish Torture, adopted at Cartegena de Indias, Colombia, on 9 December 1985 and incorporated into domestic law by Congressional Decree of Ratification No. 64-86 of 11 November 1986; and more recently the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by Congressional Decree No. 52-89 of 12 October 1989.

B. Ordinary legislation relating to torture

27. Unlike the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guatemalan domestic legislation does not define the offence of torture. However, pursuant to the signing and ratification of the Convention by Guatemala, the definition it contains has become part of domestic law, in accordance with the principle of "the primacy of international law" mentioned above and provided for in article 46 of the Constitution.

28. In fulfilment of the obligations entered into by Guatemala with respect to the system for the protection of human rights, the Penal Code (Congressional Decree No. 17-73 of 5 July 1973) lays down the following constitutional provisions. Article 423 establishes the offence of decisions infringing the Constitution as follows: "Any public official or employee who issues decisions or orders that are contrary to explicit provisions of the Constitution, or knowingly carries out orders or decisions of such nature issued by another official, or fails to comply with laws whose execution is incumbent on him shall be liable to imprisonment for a term of one to two years and a fine of 200 to 2,000 quetzales." Article 424 of the Penal Code establishes the offence of unlawful detention in the following terms:

> "Any official or person responsible for a custodial establishment who permits the entry of an individual without a lawful warrant from a competent authority, does not place the detainee at the disposal of the judge or competent authority or does not give proper and immediate effect to a legally issued release warrant shall be liable to imprisonment for a term of one to five years."

29. The same penalty shall be incurred by any public official or employee who conceals or orders the concealment of a detainee.

30. Article 425 of the Code establishes the offence of abuse against private individuals stating: "Any public official or employee who orders undue coercion, torture, degrading punishment, harassment or measures not authorized

by law against a prisoner or detainee shall be liable to imprisonment for a term of two to five years and general disqualification. Any person who carries out such orders shall be liable to the same penalty."

III. THE DE FACTO SITUATION REGARDING TORTURE IN GUATEMALA

31. For an objective understanding of the situation, reference should be made to the documents produced by the expert advisers whom the United Nations assigned to Guatemala from 1987 to 1984.

32. The cases of torture reported by Independent Experts Hector Gros Espiell and Cristian Tomuschat were assumed to be associated with enforced disappearances and so-called extrajudicial killings; cases specifically involving torture were not quantified.

33. In her 1993 report, Independent Expert Monica Pinto makes use of the statistics contained in the reports of the Procurator for Human Rights, the Human Rights Office of the Archdiocese of Guatemala and the Department of State of the United States of America, referring to 34 complaints of alleged torture submitted that year. For 1994 she refers to only 18 cases reported by the same sources.

34. Each of the Experts refers in his or her report to complaints concerning ill-treatment of street children and states that in most cases warrants issued by the courts have not been complied with.

35. In this connection, it should be pointed out that the NGOs concerned with the situation of Guatemalan street children have informed the international community that in 1994 there were no cases of alleged violation of the integrity and security of street children by members of the armed forces or the National Police, but only cases involving members of private security forces.

36. The first report of the Director of MINUGUA states that, of the 288 complaints of alleged human rights violations submitted to the Mission from 21 November 1994 to 21 February 1995, only 9 related to cases of torture. These complaints are being verified, as stipulated in the Mission's mandate.

IV. LEGISLATIVE AND ADMINISTRATIVE MEASURES FOR THE PREVENTION OF TORTURE

A. Amendments to the Code of Penal Procedure

37. With a view to promoting greater efficiency in the judicial sector, amendments were made to the Code of Penal Procedure, the Public Prosecutor's Office Organization Act was promulgated (Decree-Law No. 40-94 of 3 May 1994) and the new Code of Penal Procedure entered into force. With these innovations Guatemala has made important changes in its criminal procedure.

38. The Public Prosecutor's Office has become a body for the investigation of publicly actionable offences. It has the capacity to bring charges and conduct the prosecution, thereby becoming a defender of society and supervisor

of proceedings. It is accordingly hoped that it will usher in the rule of law and end the possibility of impunity, although there are still a few obstacles preventing its full implementation.

39. With the incorporation of the new Code of Penal Procedure into Guatemalan legislation, the concern of the Public Prosecutor's Office to prosecute and punish persons guilty of a punishable offence may be divided into two main areas:

Indictment, on society's behalf, in the case of public offences of individual or social importance;

Effective enforcement of the substantive criminal laws in specific cases through the effective investigation of the punishable acts.

40. Through these actions pursuant to the law, the Public Prosecutor's Office helps to ensure that criminal proceedings will have a convincing basis for the judge to order punishment for unlawful acts. Among which torture and other human rights violations are of crucial importance.

41. The new Code of Penal Procedure provides for special investigations in cases where an application for habeas corpus fails, in order to ascertain that the person on whose behalf the application was made is being held in one of the country's prisons, or has been arrested by a public official, police officer or members of the regular forces of the Republic. 5/ In this respect, anyone may request the Supreme Court of Justice to order the Public Prosecutor's Office to initiate an investigation within a five-day period and to order the necessary measures for the immediate release of the unlawfully detained or arrested person or persons. This innovation in criminal procedure is aimed at preventing the inhabitants of the Republic from being unlawfully detained and safeguarding victims of that practice, in order to provide genuine protection of individuals' human rights.

B. Comprehensive Agreement on Human Rights

42. On 29 March 1994, the Government of the Republic and the Guatemalan National Revolutionary United Front signed the Comprehensive Agreement on Human Rights in the context of a process whose objective is to achieve a firm and lasting peace agreement for Guatemala. In particular, the Agreement contains a general commitment to promote and improve the standards and mechanisms for the protection of human rights; irrefutable proof of the Government's political will is its acceptance of an international verification body, on the understanding that that body will take account of the strengthening of institutions.

C. Ministry of the Interior and National Police

43. Pursuant to the recommendations made by the human rights advisory services, the Ministry of the Interior has strengthened the Professional Responsibility (Internal Investigations) and Human Rights Offices of the National Police, so that the relevant investigations will be carried out in those cases where police officers are involved. As a supplementary measure,

all National Police officers have been given systematic instruction concerning full respect for human dignity, in order to prevent human rights from being violated in the exercise of their police duties.

44. In addition, the constitutional rights of detainees have been published in the General Police Regulations, in order to ensure that police officers making an arrest will not commit infringements of human rights.

45. The credentials of so-called advisers, also known as secret agents, attached to the Directorate-General of the National Police and the Ministry of the Interior, have been cancelled since some individuals had been found to be using them only to be able to carry firearms, when they were not in fact serving members of the police force. Currently the only credentials granted are for regular members of the force on active duty.

46. All police stations in the capital and the provinces, as well as other units making up the National Police, have been instructed that they may in no circumstances use objects or vehicles that have been seized and are at the disposal of the Public Prosecutor's Office or the courts. In carrying out its work, the National Police must use vehicles duly authorized for that purpose; all officers have strict orders not to use private vehicles for official matters involving investigation or detention.

47. If National Police officers are found to have committed a criminal offence, the heads of the Professional Responsibility Office have orders immediately to inform the Public Prosecutor's Office of the findings of the investigation, for appropriate action.

48. The National Police opened the Anti-Abduction Unit during the first half of 1995. This is a unit made up of members of the Criminological Investigation Department, whose main function is to deal with cases of abduction and kidnapping.

49. In this connection, from 8 to 19 May 1995 a course on the prevention of abductions was given to members of the National Police and the Public Prosecutor's Office. In addition, with the support of the Presidential Coordinating Committee for Government Human Rights Policy (COPREDEH), police commissioners, investigators and administrative personnel were given training in human rights and in the Comprehensive Agreement on Human Rights.

50. As part of their training, copies of the Code of Conduct for Law Enforcement Officials were distributed to members of the National Police and Guatemalan army.

D. Ministry of National Defence

51. The Ministry of National Defence, for its part, organized courses for officers in international humanitarian law; they were given by staff of the International Committee of the Red Cross in the facilities of the Centre for Military Studies. The Ministry programmes yearly courses for human rights monitors and courses on the Guatemalan Constitution, using teachers from the Office of the Procurator for Human Rights.

52. For December 1995 the Ministry of National Defence has scheduled training courses for the entire Guatemalan Army, with the aim of disseminating the contents of the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly in resolution 47/133.

E. Street children

53. As regards the ill-treatment of the so-called "street children", the National Police, through its branch dealing specifically with such children, has prepared guidelines on police procedures for handling juvenile offenders, with the aim of complying with the Convention on the Rights of the Child.

54. COPREDEH also comprises a unit that deals with the problem of children. This body has established the Standing Council for Children.

55. This Council has been meeting in 1995 for the purpose of following-up 13 complaints of violations of the rights of minors, in which no progress had been made, despite the existence of sufficient evidence to bring them to a conclusion (see annex).

56. Some non-governmental organizations have reported that there have been few prosecutions in cases of ill-treatment of children, especially children living in the street. From 1990 to 1994, 188 criminal proceedings were begun against a total of 282 defendants; those are still under way in the various courts.

57. The Congress of the Republic is considering the preliminary draft of the Code relating to Boys, Girls and Adolescents which, if adopted, will govern all actions affecting this sector of the population.

58. The Office of the Procurator for Human Rights, through its Protection of Children Branch, coordinates the National Commission for the Prevention of Ill-Treatment of Children, which is made up of governmental and non-governmental organizations and works to raise awareness and provide training at all levels of the population and institutions. Complaints are investigated, in conjunction with the Coordinating Juvenile Court. Violence and ill-treatment of children within the family occur very frequently in Guatemala.

F. Threats

59. There have been several reports in the media of death threats, and in some cases specific complaints have been filed with the competent courts. In this connection, the Ministry of the Interior, through the National Police, has strengthened the homicide sections of the Criminological Investigation and Disappeared Persons Department.

60. As regards complaints of threats against members of the trade-union movement and leaders of non-governmental organizations engaged in the promotion and defence of human rights, COPREDEH has made a 24-hour telephone service available to them in order to coordinate appropriate action in each case.

61. With the implementation of the new legislation, death threats against members of the Public Prosecutor's Office have come to light. Blanca Elizabeth Valdez Orellana de Cetina, special prosecutor in the municipality of Amatitlan, received death threats relating to the investigation of cases involving drug-trafficking, in connection with which one of the witnesses known to the special prosecutor was murdered.

62. Other prosecutors who have received death threats are Abraham Méndez, who is investigating the case of Jorge Carpio, and Julio Arango, who is dealing with the Efraín Bámaca case. In both cases the Office of the Attorney-General of the Republic is providing appropriate security, with the support of the Ministry of the Interior.

63. Judge Eugenia Villaseñor, who handled the case of the anthropologist Mirna Mack, is known to have received similar threats.

64. On learning of each of these cases of threats, the Public Prosecutor's Office has provided security for each of its prosecutors and anyone else requesting it.

65. Twenty-one other judges have received death threats. The Supreme Court of Justice has taken specific security measures to ensure their safety, in cooperation with the Ministry of the Interior.

V. CASES WITHIN THE COMPETENCE OF THE JUDICIARY

Case No. 638 of 6 August 1990

66. Teachers from Casa Alianza lodged a complaint against four members of the National Police in civilian dress who, at 12 a.m. on 25 June 1990, arrested six minors at 19th Street and 4th Avenue in Zone 1 and, using excessive force, forced them into patrol vehicle 327. On that date orders had in fact been given for a police operation in the area around Amate, La Placita, Zone 1. The operation was led by members of National Police Units 1, 3 and 7, with support from the Joint Operations Centre. Adults and minors were arrested for various reasons. The minors charged were placed at the disposal of the juvenile court. At the time of their arrest they had not been speaking with street teachers and were not subjected to ill-treatment.

Case No. 400-91 of 7 August 1991

67. Julio Chew and Marvin Rabanales, assistants in the Casa Alianza Legal Support Office, lodged a complaint to the effect that at 2 p.m. on 11 April 1991, on 4th Avenue between 17th and 18th Streets in Zone 1, officers from patrol car 711 attached to the Seventh Police Division arrested a minor, Omar Moran, who, before being forced into the patrol car, was beaten by an officer bearing identification number 4381.

68. Omar Moran was arrested because he had been running in a suspicious manner holding a wrist watch in his hand. Officer Edwin de la Cruz Sandoval arrested him, at which point the minor proceeded to kick the officer and tried

to escape. He was prevented from doing so when Officer Juan Córdova Marroquín came on to the scene. Moran was taken in patrol car 711 to the juvenile court.

69. When complainants Julio Chew and Marvin Rabanales were interviewed by the National Police's Professional Responsibility Office, they stated that the reason for their complaint was that they did not know where the minor had been taken. They further stated that they had not seen any sign that the minor had been beaten by the officers who arrested him.

Case No. 471-91 of 8 April 1991

70. Mr. Otto Ivan Rodriguez Vanegas, a member of the National Electrification Institute (INDE) trade union, published a complaint in the media to the effect that he had been arrested by National Police officers from the department capital, Chiquimula, and subjected to ill-treatment. He knew for certain the names of the police officers who had attacked him but would not state their names out of fear for his own safety and that of his family.

71. The Deputy Chief of the National Police in Chiquimula, Ricardo Flores Chacón, and officers Angel Antonio Gonzalez Barahona, Miguel Angel Gudiel and Cesar Augusto Avila Ruano stated that at 5.30 p.m. on that date, at kilometre 174 on the Inter-American Highway, Mr. Oliverio Angel Echeverria Oliva, Mr. Eugenio García Alvarez and Mr. Otto Ivan Rodriguez Vanegas had been arrested while driving in a pick-up van with the number plate P-64610, which they had substituted for plates No. P-235656. The vehicle was stolen on 17 April 1990. At the time of their arrest, a 9 mm Beretta pistol, a cellular telephone and 20,000 lempiras were confiscated from them, for which reason they were brought before the local justice of the peace (case No. 659). At no time were the detainees subjected to ill-treatment.

72. The local justice of the peace, José Humberto Orellana Penados, has certified that the persons being held for trial bore no signs of any blows.

Case No. 1087-91 of 20 September 1991

73. On 31 August 1991, the Assistant Chief and Inspector-General of the National Police ordered two senior police officers to be assigned to investigate the complaint published by the newspaper Prensa libre concerning torture and injuries sustained by Mr. Ezequiel Trujillo Hernández, Mr. Francisco Castillo García and Mr. Carlos Geovanny Rosales Chávez when they were arrested by National Police officers.

74. The report of the officers conducting the investigation states that when the officers tried to arrest Mr. Trujillo Hernández, Mr. Castillo García and Mr. Rosales Chávez, they were obliged to use force because of the resistance they put up. A 38 mm Smith and Wesson revolver, registration No. C 380,890, a 38 mm Taurus revolver, registration No. 1,533,021 and a 7.65 calibre pistol (no make indicated), registration No. 610,071, were confiscated. On examining the evidence in the case, the laboratory determined that the bullets extracted from the bodies of the police officers murdered on 9 August 1991 had been shot

from the 7.65 calibre pistol. The report also states that the senior officers at the Preventive Centre in Zone 18 noted that the detainees showed no evidence of burns on their hands or other signs of torture.

Case No. 1208 of 28 July 1992

75. On 21 July 1992, a group of peasants from the municipality of Cojalá, department of Quetzaltenango, were on the Plaza Mayor in Guatemala City when they were told to leave by National Police officers under the command of Third Chief General Mariano Carpio Mazariegos. The officers used violence in removing them and were accordingly brought before the courts.

Case No. 528 of 2 March 1995

76. The body of Pedro Luis Choc Reyna was found on wasteland by the highway leading to the Austrian High School in zone 16. Death had been caused by a bullet wound. Edgar Estuardo Mota González was injured on the same spot.

77. When this event was investigated, it was determined by the chief of the Sixth National Police Division that on 10 February 1995 patrol car 603 had been responsible for the shift beginning at 1 p.m. and ending at 1 a.m. on 11 February 1995. This car was manned by driver Miguel Angel López Calo, together with Captain Anibal Archila Perez and Miguel Angel Rodríguez Revolorio (PN-2); it is not known why the latter officer was in the car at that time.

78. On 11 February 1995 the Justice of the Peace was informed (case No. 316) that National Police officers Archila Perez, López Calo and Rodríguez Revolorio had been placed under disciplinary arrest on the premises of the Sixth Police Division and were under investigation. On the same day he ordered the officers to be detained on various charges. On 12 February, the judge's order was executed and the police officers were placed at his disposal.

CASE NO. 1,377-95 ORP. OF 17 MAY 1995

79. On that date National Police officers Carlos Manuel Ramirez Lepe and Israel Díaz were brought before the Justice of the Peace in Amatitlán after it was established that they had killed Mr. Alfredo Hernández Pérez. The judge also issued a warrant for the arrest of police officer Jose Caldra Merlos on a charge of involvement in the murder.

Case involving military officers

80. Military officers Lorenzo López, Catarino Ramos Ramos and Faustino Ramos Lopez were sentenced to death by the Seventh Division of the Court of Appeal in Quetzaltenango after being found guilty of the murder of Catarino Gómez Hernández. This murder occurred on 25 March 1993 in the village of Nuevo Progreso, Tajamulco, San Marcos. The officers took advantage of their rank in order to commit the offence. In its decision, the Seventh Division stated that the officers deliberately increased the victim's suffering and the effects of the crime and also that torture was perpetrated at intervals in order to increase the victim's pain.

VI. CONCLUSIONS

81. The conviction of military officers Lorenzo López, Catarino Ramos and Faustino Ramos Lopez is unprecedented in the country's judicial history. This underscores the will of the State of Guatemala to ensure compliance with the provisions of domestic legislation and the international conventions governing this question.

82. The Guatemalan authorities are completely unaware of many of the cases that have come to the attention of the international community. Guatemala is fully determined to ensure the implementation of the legal provisions in force, provided that the corresponding substantiated complaints of human rights violations are lodged with the courts and conclusive evidence is produced in the course of the proceedings.

83. Guatemala is making every effort to create a culture of respect for, and observance of, human rights by publicizing the contents of the international human rights instruments relating to the subject at various levels.

84. In Guatemala a process of change in the administrative, judicial and security sectors is under way, within the context of respect for human rights.

85. The Government of Guatemala is itself in no way involved in the continuing de facto situation with regard to the alleged violations of human rights.

86. Guatemala does not practise a policy of impunity backed by the Government itself or encouraged by governmental sectors.

Notes

1/ Constitutional Court, judgement of 17 September 1986, Case No. 12-86, Gaceta I, p. 3.

2/ Constitution, art. 45.

3/ Constitution, art. 46.

4/ This constitutional provision has been developed in article 424 of the Penal Code, which establishes the offence of unlawful detention, carrying a penalty of one to five years' imprisonment.

5/ Code of Penal Procedure, art. 467.

Annex

CASES INVOLVING STREET CHILDREN SUBMITTED TO COPREDEH

1. Henry Yubani Alvarez Benites
Murder, 17 April 1993
Case No. 1174-93, First officer
Second Criminal Court of First Instance

2. Francisco Tziac Soc
Injuries, 22 April 1993
Case No. 1265-93, Sixth officer
Second Criminal Court of First Instance
Transferred to Public Prosecutor's Office on 15 March 1995
(Mrs. de Arévalo)

3. Marvin Benjamin Monterroso Rodriguez
Murder, 5 October 1993
Fifth Trial Court
Case No. 479-93, Second officer

4. Luis Antonio Roldan Izeppi
Injuries, 3 March 1994
Case No. 1495-94, Third officer
Prosecutor Carlos Ramiro Contreras Valenzuela (Public Prosecutor's Office)

5. Gerardo Anibal Caceres Mejia
Rape, 15 October 1994
Case No. 827-94, Juvenile Prosecutor's Office (Mrs. Sandra Díaz de Franco)
Case No. 352-94, First officer, Second Criminal Court of First Instance, Drug-trafficking and environmental offences

6. Luis Fernando Quezada Rojas
Physical ill-treatment, 11 October 1994
Case No. 807
Prosecutor Díaz (Public Prosecutor's Office)

7. Sergio Miguel Fuentes Chavez
Murder, 7 September 1994
Case No. 3149-94, Clerk of the Court
First (Rota) Criminal Court
Mrs. María del Rosario Acevedo Peñate (Public Prosecutor's Office)

8. Edgar Eduardo Pineda
Murder, 21 August 1994
Case No. 1464-94, Sixth officer
Fifth Court of First Instance
Mr. Abel Méndez (Prosecutor, Public Prosecutor's Office)

9. Juan Humberto Ramos Cifuentes and Cecilio Jax
Murder, 20 July 1994
Case No. 172/Prosecutor Jorge Luis García Yelmo

10. Oscar René Marroquin
Murder, 5 January 1995
Case No. 33-95
Prosecutor Silvia Elena Toledo Coronado
Complaint filed on 23 February 1995

11. Marlon Alexander Rodriguez
Murder, 27 March 1995
Being processed by Public Prosecutor's Office

12. Gaviotas Case
Physical ill-treatment against inmates
13 October 1994
OFFICE OF PROCURATOR FOR HUMAN RIGHTS
Case No. 547/94/DH

13. Victor Manuel Alex
Injuries, 27 September 1994
Case No. 906-94
Prosecutor María Stella Flores Escobar de Arévalo